



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 8

[Docket No. USCG-2012-0861]

RIN 1625-AB90

Adding International Energy Efficiency (IEE) Certificate to  
List of Certificates a Recognized Classification Society  
May Issue

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is amending its Vessel Inspection Alternatives regulations to add the International Energy Efficiency (IEE) Certificate to the list of certificates that a recognized classification society may issue on behalf of the Coast Guard. We are making this change because Annex VI of the International Convention for the Prevention of Pollution by Ships, 1973, as modified by the Protocol of 1978, has been amended to address energy efficiency for ships, and these amendments call for the issuance of IEE Certificates starting January 1, 2013. This rule will enable recognized classification societies to apply to the Coast Guard to issue IEE Certificates to

vessel owners and help to ensure that the demand for IEE Certificates is met.

DATES: This final rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] .

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-0861 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2012-0861 in the Search box, and pressing Enter.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Wayne Lundy, Systems Engineering Division, Office of Design and Engineering Standards, Coast Guard; telephone 202-372-1379, e-mail [Wayne.M.Lundy@uscg.mil](mailto:Wayne.M.Lundy@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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## I. Abbreviations

ABS	American Bureau of Shipping
APPS	Act to Prevent Pollution from Ships
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
EPA	Environmental Protection Agency
FR	Federal Register
IEE	International Energy Efficiency
IMO	International Maritime Organization
MARPOL	
Protocol	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978
MEPC	Maritime Environment Protection Committee
NMFS	National Marine Fisheries Service
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

## II. Regulatory History

On October 2, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Adding International Energy

Efficiency (IEE) Certificate to List of Certificates a Recognized Classification Society May Issue" in the *Federal Register* (77 FR 60096). We received one written submission on the proposed rule. No public meeting was requested and none was held.

### III. Basis and Purpose

The Coast Guard is amending its Vessel Inspection Alternatives regulations to add the International Energy Efficiency (IEE) Certificate to the list of certificates that a recognized classification society may issue on behalf of the Coast Guard. We are making this change because Annex VI of the International Convention for the Prevention of Pollution by Ships, 1973 (MARPOL), as modified by the Protocol of 1978 (MARPOL Protocol), has been amended to address energy efficiency for ships, and these amendments call for the issuance of IEE Certificates starting January 1, 2013. This rule will enable recognized classification societies to apply to the Coast Guard to issue IEE Certificates to vessel owners and help to ensure that the demand for IEE Certificates is met.

### IV. Background

The Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901 et seq., implements legislation for the International Convention for the Prevention of Pollution

from Ships, 1973 as modified by the Protocol of 1978 (MARPOL Protocol), which includes MARPOL Annex VI: Regulations for the Prevention of Air Pollution from Ships. See 33 U.S.C. 1901(a)(4) and (5). APPS directs the Secretary of Homeland Security to prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol, and it directs the Secretary to designate those persons authorized to issue MARPOL Protocol certificates on behalf of the United States. See 33 U.S.C. 1903(c) and 1904. This authority was delegated to the Coast Guard. See Department of Homeland Security Delegation No. 0170.1. As required by APPS, the Coast Guard has consulted with the U.S. Environmental Protection Agency (EPA) regarding this final rule.

On July 15, 2011, in resolution MEPC.203(62), the International Maritime Organization's (IMO's) Marine Environment Protection Committee (MEPC) adopted amendments to MARPOL Annex VI. Those amendments, which were accepted July 1, 2012, and come into force January 1, 2013, contain energy efficiency provisions for new and existing ships. These amended regulations call for the issuance of an International Energy Efficiency (IEE) Certificate to document a ship's compliance with Annex VI's new Chapter 4, Regulations on Energy Efficiency for Ships. See amended

Annex VI Regulations 5.4 and 6.4. Since the mid-1990s, under authority of 46 U.S.C. 3103, 3306, 3316, and 3703, and regulations in 46 CFR part 8 – Vessel Inspection Alternatives, the Coast Guard has authorized recognized classification societies to issue international certificates to vessels. The Coast Guard regularly adds to the list of international certificates that classification societies may apply to issue to vessels on the Coast Guard's behalf. This list is located in 46 CFR 8.320(b). Recent additions to the list include the MARPOL 73/78 International Air Pollution Prevention Certificate and the International Anti-Fouling System Certificate. See, respectively, 74 FR 21554, May 8, 2009; and 76 FR 76896, Dec. 9, 2011. The United States currently recognizes seven classification societies for purposes of issuing international certificates: the American Bureau of Shipping (ABS, United States); Det Norske Veritas (DNV, Norway); Lloyd's Register (LR, Great Britain); Germanischer Lloyd (GL, Germany); Bureau Veritas (BV, France); RINA S.p.A. (RINA, Italy), and ClassNK (NKK, Japan).

Recognized classification societies assist the Coast Guard and help to ensure that U.S.-flagged ships that qualify for an international certificate are able to obtain it promptly. As we stated in 1996, to avoid a duplication

of effort between the Coast Guard and classification societies that results in extra costs to U.S. vessel owners, it is more efficient to take full advantage of inspections done by classification societies:

... Insurance companies require that, before a vessel is insured, it be classed. This means that a classification society must survey a vessel for compliance with its class rules. Class rules are rules developed by the particular classification society to cover design, construction and safety of vessels. To ensure compliance with these class rules and with international standards, classification societies perform surveys on vessels using qualified marine surveyors. Many of the items examined by the classification society surveyors are the same as those examined by Coast Guard marine inspectors in their inspections for certification.

61 FR 68510-11, December 27, 1996.

Starting January 2013, U.S.-flagged ships that are 400 gross tonnage or more as measured under 46 U.S.C. 14302, Convention Measurement System, (hereafter 400 GT ITC or more) may be subject to detention or delay in foreign ports if they do not have an IEE certificate to document compliance with Annex VI. See amended Annex VI Regulation 19.

Section 8.320 of 46 CFR allows the Coast Guard to delegate issuance of an international convention certificate to a recognized classification society only if the certificate is listed in § 8.320(b). The IEE Certificate is not currently listed in § 8.320(b).

## V. Discussion of Comments and Changes

As noted, we published an NPRM on October 2, 2012 (77 FR 60096). We received one written submission containing three comments. See docket USCG-2012-0861.

First, the commenter recommended that the Coast Guard consult with the National Marine Fisheries Service (NMFS) within the Department of Commerce regarding this rulemaking, as we did with the EPA. She wrote that NMFS's expertise is valuable in determining whether adding the IEE Certificate is worth the additional administrative costs it will cause. In response to the first comment, the Coast Guard did contact NMFS and advised them of our rulemaking and this comment. The NMFS had no comments.

Second, regarding the comment on the administrative cost of adding the International Energy Efficiency (IEE) Certificate, we note that APPS requires compliance with Annex VI, which now includes a new chapter, Chapter 4, with energy efficiency requirements for ships, and the IEE Certificate documents compliance with these Chapter 4 requirements. See 33 U.S.C. 1907 (a). Annex VI Regulation 6.5 directs that the IEE "certificate shall be issued or endorsed either by the [United States] or any organization duly authorized by it." APPS directs the Secretary of Homeland Security to designate those persons authorized to



issue MARPOL Protocol certificates on behalf of the United States and this final rule does that. See 33 U.S.C. 1904 (a).

Third, the commenter recommended that the United States consider creating its own energy efficiency certificate that has greater standards than the IEE Certificate, and that such a certificate could meet the standards of the IEE Certificate, and more. The commenter stated: "This way other areas could require the IEE Certificate as a minimum baseline, while [a U.S.] energy efficiency certificate would not only meet the minimum baseline but also go beyond it." This third comment is beyond the scope of this rulemaking. This rulemaking is solely intended to identify who may issue a MARPOL Annex VI IEE certificate on behalf of the Coast Guard. We made no changes from the proposed rule based on any of these comments.

In the NPRM, we proposed to insert a statement regarding preemption in § 8.300, of part 8, subpart C, International Convention Certificate Issuance, and to rename that section heading "Purpose and Preemption." See 77 FR 60098, 60100, October 2, 2012. After another review of Presidential Memorandum of May 20, 2009 titled "Preemption" (74 FR 24693, May 22, 2009) however, we have

determined that we should not include our proposed changes to § 8.300 in this final rule. As discussed in our preamble Federalism section, VI.E, below, States may not regulate in an area that is preempted by Federal statute. APPS is the source of preemption regarding the issuance of MARPOL certificates, not this regulatory action. Therefore, our only change to the CFR in this final rule is to add the IEE certificate to § 8.320.

## VI. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This

final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this final rule has not been reviewed by the Office of Management and Budget. A final regulatory assessment follows:

Under the authority of 33 U.S.C. 1903, 1904, and 46 U.S.C. 3103, 3306, 3316, and 3703, the Coast Guard is amending 46 CFR 8.320, to enable the Coast Guard to delegate the activity of issuing IEE Certificates to a recognized classification society that would act on behalf of the Coast Guard. The intent of this rule is to allow for the delegation of IEE Certification to recognized class societies and thus create options for industry in obtaining these certificates. This rule does not impose mandatory actions on the U.S. maritime industry.

Although requesting the delegation of authority to conduct IEE surveys, inspections, and certifications is voluntary, classification societies may incur minor costs associated with this process. The Coast Guard may incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

The Coast Guard estimates that this rule would potentially affect seven classification societies that may

request a delegation of authority to issue IEE Certificates. The Coast Guard used an Office of Management and Budget (OMB)-approved collection of information (1625-0041) to estimate the costs and burden.

The Coast Guard estimates that it will take classification society employees 5.25 hours to review the rulemaking requirements and prepare the delegation request, at an average one-time cost of \$428.75 per classification society (3.5 hours at \$112 per hour<sup>1</sup> for a director and 1.75 hours at \$21 per hour for an administrative assistant). The total one-time cost for all seven classification societies is estimated to be \$3,000 (rounded).

In addition, the Coast Guard estimates that it will incur a one-time cost to review and approve the requests for delegation. Based on the OMB-approved collections of information discussed above, the Coast Guard estimates that it will take about 5 hours to review, approve, and issue an order to delegate authority, at an average cost of \$360 per event (3.5 hours for reviewing/approving and 1.5 hours for issuing at \$72 per hour for a lieutenant (O-3)). The Coast Guard estimates a total one-time Government cost of \$2,500

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<sup>1</sup>All hourly wages shown are "fully loaded" wages. Fully loaded wages include the costs of employer paid benefits such as health insurance.

(rounded) based on OMB-approved collection of information estimates.

The Coast Guard estimates the total one-time cost of this rule for classification societies and the Government combined to be approximately \$5,500 (non-discounted) for classification societies and the Government combined.

This rule may result in several benefits to the U.S. maritime industry. First, it may result in a reduction of potential wait time for IEE certificates. In the absence of delegation of authority to classification societies, vessel owners and operators may experience delays while the Coast Guard processes and issues IEE Certificates. The Coast Guard also might have to redirect resources that could be used for other missions, resulting in a less efficient use of Government resources. Finally, this rule may mitigate potential consequences to U.S.-flagged vessels due to non-compliance with the Convention, including costly vessel detentions in foreign ports.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Affected classification societies are classified under one of the following North American Industry Classification System codes for water transportation: 488330 – Navigational Services to Shipping, 488390 – Other Support Activities for Water Transportation, or 541611 – Administrative Management and General Management Consulting Services.

The only predominate U.S. classification society is the American Bureau of Shipping (ABS). ABS is a privately owned non-profit organization that is dominant in its field (Source: 2011 Hoovers, [http://www.hoovers.com/company/American Bureau of Shipping Inc/rfsksji-1.html](http://www.hoovers.com/company/American+Bureau+of+Shipping+Inc/rfsksji-1.html)). Based on publicly available information, ABS has more than 3,000 employees and annual revenues of more than \$800 million<sup>2</sup>. We do not consider ABS to be a small entity using the Small Business Act definitions of a small entity.

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<sup>2</sup> Source: 2011 Bloomberg, <http://investing.businessweek.com/research/stocks/private/person.asp?personId=28915205&privcapId=4217113&previousCapId=764755&previousTitle=ABS%20Group%20of%20Companies,%20Inc>

The Coast Guard expects that this rule will not have a significant economic impact on a substantial number of small entities. As described in section VI.A. of this preamble, "Regulatory Planning and Review," the anticipated cost of this proposed rule, per class society, would be less than \$500. This rule is not mandatory, and classification societies, regardless of size, would choose to participate only if the benefits are greater than the costs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Systems Engineering Division, Coast Guard, telephone 202-372-1379 or email [Wayne.M.Lundy@uscg.mil](mailto:Wayne.M.Lundy@uscg.mil). The Coast Guard will not retaliate against small entities

that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because the Coast Guard expects that the number of applications would be fewer than 10 in any given year.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

As noted above, APPS implements the MARPOL Protocol. APPS also directs the Secretary to "designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol." See 33 U.S.C. 1904. By enacting this specific provision, it was the intent of Congress to give the Coast Guard, as delegated by the Secretary, the exclusive authority to regulate within this field.



A State may not regulate in an area such as this one which is field preempted by Federal statute. Because the exclusive authority to issue certificates under APPS was given to the DHS Secretary by law, and further delegated to the Coast Guard, this rule does not substantially affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this rule does not have implications for federalism because the States are preempted from issuing certificates evincing compliance with APPS.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that might disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Tribal governments, on the relationship between the Federal Government and Tribal governments, or on the distribution

of power and responsibilities between the Federal Government and Tribal governments.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866, supplemented by Executive Order 13563, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraphs (34)(b) and (d), of the Instruction, and under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). This rule involves the delegation of authority, the inspection and documentation of vessels, and congressionally-mandated

regulations designed to improve or protect the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 8 as follows:

Part 8 - VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

Authority: 33 U.S.C. 1903, 1904, 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, and 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

2. Amend § 8.320 as follows:

a. In paragraph (b)(12), remove the word "and";

b. In paragraph (b)(13), remove the period at the end of the sentence and add, in its place, the text "; and";  
and

c. Add paragraph (b)(14) to read as follows:

§ 8.320 Classification society authorization to issue  
international certificates.

\* \* \* \* \*

(b) \* \* \*

(14) MARPOL 73/78 International Energy Efficiency  
Certificate.

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Dated: December 5, 2012

J. G. LANTZ

Director of Commercial Regulations and  
Standards, U. S. Coast Guard

[FR Doc. 2012-29749 Filed 12/07/2012 at 8:45 am; Publication  
Date: 12/10/2012]